



---

# Guidelines for Contracts with Public Authorities

5th Edition

---



---

# Guidelines for Contracts with Public Authorities

2023 Update

---

Public  
Procurement

5th Edition

Contributions  
from the following

# Legalink member firms

---

Prieto Abogados

Jakoby Rechtsanwaelte

Hassans

Szecskay

Dua Associates

Cocuzza

Gasser Partner

Azman Davidson & Co.

Ramos Ripoll & Schuster

Divina Law

Sérvulo & Asociados

PR Legal

Barun Law

López-Ibor Abogados

Hellström

Lindborg & Mazor LLP

Chile

Germany

Gibraltar

Hungary

India

Italy

Liechtenstein

Malaysia

Mexico

Philippines

Portugal

Serbia

South Korea

Spain

Sweden

U.S.A.

LOPEZ–IBOR

# López-Ibor Abogados Spain

## 1. Does your legal system provide specific procedures for the award of contracts by contracting authorities?

The legal regime of Spanish public procurement is nowadays very consolidated. Successive administrative regulations have been outlining this regime, so that in the latest law on the matter, the different administrative contracting procedures envisaged are regulated, each of them depending on the particular case and needs of the contracting authority.

Law 9/2017, of 8 November, on Public Sector Contracts, which transposes into Spanish law the European Parliament and Council Directives 2014/23/EU and 2014/24/EU, of 26 February 2014, is the main regulation on the matter and includes the most important procedures for contracting with the State and the public bodies in general.

## 2. Do the procedures for the award of contracts depend on the kind of goods, services etc., which are to be procured?

According to subsection 2.<sup>a</sup> of the Chapter "On actions relating to the contracting of Public Administrations" of Law 9/2017, contracts entered into by Public Administrations in Spain are awarded taking into account criteria based on the principle of best value for money (price-performance ratio), and using one of the following procedures:

Open tendering procedure.

Restricted procedure.

Procedure with negotiation.

Competitive dialogue.

Innovation partnership procedure.

Project tenders.

## 3. Do the procedures for the award of contracts and/or certain procedural regulations depend on the value of the goods, services etc., which are to be procured (thresholds) and if so, what are the thresholds?

In the case of the opening tender procedure, there are two different proceedings:

Simplified open tender: Contracts with an estimated value below the threshold established by the European Commission for contracts subject to harmonized regulation (SARA). These thresholds distinguish between works contracts, works concessions and service concessions, supply contracts and design contests. In each case it establishes value thresholds for the application of these procedures.

## LOPEZ-IBOR

Super-simplified open, simplified abbreviated or express open tender: Works contracts with an estimated value of less than EUR 80,000 and supply and service contracts with a threshold of EUR 60,000.

In the remaining procedures, their application will depend on substantive factors such as the type of service to be implemented, the publicity to be given to the tender, the type of need to be covered by the State, the capacity of market players to provide a customized solution or the degree of innovation required in the service provided.

### 4. **In what way does the contracting authority have to inform the market about the intended procurement?**

The publicity of tendering procedures is one of the most relevant formalities that must be safeguarded in all procedures, except in very exceptional and restrictive circumstances.

The most suitable mechanisms to inform about the intention to contract by the State or any public agency are through the "Prior Information Notice" (Art. 134 of Law 9/2017) and the "Tender Notices" (Art. 135 of Law 9/2017).

"Prior Information Notice": They appear in advance of the "Tender Announcements" and serve to inform about the needs for works, supply or service contracts that, being subject to harmonized regulation, the bodies plan to award up to the following twelve months. This type of announcement is not mandatory but is used by the public body to shorten the deadlines for submitting bids. They can be published in the Official Journal of the European Union or on the contractor's profile.

Therefore, a pre-announcement provides in advance significant data on a procurement that will appear later and allows for preparation if the interested party sees that it falls within the scope of its business plans with the Administration.

"Tender Notices": It gives notice that the public body is going to procure and sets out the deadlines and main requirements.

"Tender Notices" are published in the following places:

1. In any case, in the "contractor's profile".
2. In the case of procurement subject to harmonized regulation, also in the Official Journal of the European Union.
3. In the case of the General State Administration or entities linked to it that are Public Administrations, they will also be published in the BOE -the Official State Gazette, which is the official journal of the Kingdom of Spain.

## LOPEZ–IBOR

The most important data in a contract notice are:

1. Identification of the contracting authority.
2. Electronic address where the tender documents are available.
3. Tender amount.
4. Date, time and place for submission of tenders.
5. Conditions for participation.
6. Criteria for the award of the contract.
7. In the case of open procedures, date, time and place for the opening of tenders.

### 5. **Are calls for tender from contracting authorities published on a single or on multiple freely accessible website(s)? If yes, please name the website(s).**

The State Procurement Platform should contain all public tenders of the State and its agencies, however, this is often not the case. It is recommended to periodically check the following official gazettes:

DOUE - Official Journal of the European Union

BOE - Official State Gazette

BOA - Official Gazette of the Region -Autonomous Community-

BOP – Provincial Official Gazette

In addition to the State Procurement Platform, there are other platforms at regional, provincial, provincial council and town council level. You can also take into account the profiles of contractors, which include all public entities that may issue a public tender.

### 6. **Does a potential bidder that is interested in the contract need to have a specific legal form, e.g., corporation, to submit a tender?**

No. Any natural or legal person, Spanish or foreign, may participate in a tender process, as long as they comply with the general requirements.

In some cases, there might be specific requirements in the corresponding specifications in each of the published tenders.

### 7. **Are bidders allowed to submit joint offers, e.g., as general contractor and subcontractor or as bidding consortium?**

Yes, but in such a case these bidders are not allowed to submit separate proposals.

## LOPEZ-IBOR

### 8. Do potential bidders interested in the contract need to have a registered office or branch office in your country or is it possible to submit a tender for the contract directly from abroad?

It is possible to bid for the contract directly from abroad.

There are certain common requirements that must be met, both by foreigners and Spanish bidders:

- Proof of being up to date with payment obligations with the Treasury and Social Security.
- In certain cases, registration in the Official Register of Tenderers and Classified Companies in the Public Sector (ROLECE).
- To have full capacity to act, technical self-sufficiency and economic and financial solvency.
- Not be subject to any prohibition to be hired.
- Possess business or professional authorization for the services that constitute the purpose of the contract.

### 9. If it is possible for foreign bidders to submit a bid for a contract to a contracting authority directly from abroad, does the foreign bidder have to consider certain additional aspects, such as having to provide certain additional supporting documents or whether domestic bidders receive preferences in the award of contracts?

The capacity to act must be demonstrated in a different way, depending on whether they are non-Spanish bidders who are members of the EU or non-Spanish bidders who are not members of the EU:

Non-Spanish bidders who are members of the EU: They will prove this by showing that they are registered in the appropriate company register in accordance with the legislation of the country where they are established, or by presenting a sworn statement or certificate.

Non-Spanish entrepreneurs who are not members of the EU: They must present a report from the Diplomatic Mission or Consular Office of Spain in the corresponding country which states that they are duly incorporated and registered in the country where they are established.

### 10. Is a multinational bidding consortium allowed to submit a bid?

Yes, it is possible.

### 11. In which language do the tenders have to/can be submitted and which form is required, e.g., written form, fax, e-mail, or digital?

All documentation must be provided in Spanish and, in the case any official documentation is in a foreign language, a sworn translation into Spanish needs to be provided.

The tender procedure is completely online.

## LOPEZ–IBOR

### 12. **Are there any legal regulations governing the time within which bids have to/can be submitted to the contracting authority?**

The authorities shall fix the time limits for the submission of the tender documentation, taking into account the time that may reasonably be required to prepare the submissions, depending on the complexity of the contract, and in accordance with the minimum time limits laid down by law.

The statutory minimum time limits shall depend on the complexity of the tendering procedure. For example, in open procedures for the award of contracts subject to harmonized regulation, the deadline for the submission of proposals shall not be less than thirty-five days; and thirty days for works and services concessions.

In other more specific or simple procedures, the legal minimum time limits may be between five and thirty days.

### 13. **Can the bidders claim their costs for preparing their bid? If so what are the conditions for and the maximum amount of reimbursement?**

As a general rule, expenses or costs arising from bidders' participation in tendering procedures are not reimbursable. Participants shall take part in tenders at their own risk and shall bear the costs involved. The award of the contract to a particular bidder does not entitle the remaining participants to claim the costs of the procedure.

Exceptionally, it may happen that the procedure is declared null, invalid or ineffective due to a formal or substantive defect or circumstance which is contrary to law and has had an impact on the outcome of the tender.

In this scenario, the aggrieved bidder must go to court to claim both the unlawfulness of the procedure and the damages caused. The damages that can be claimed may refer to the loss of the contract - with many qualifications - or to the costs of preparation and participation in the tender.

### 14. **Are there any selection criteria set by law that bidders have to satisfy to in order to receive the award of a contract and can the contracting authority establish its own additional selection criteria?**

Article 145 of the Law 9/2017, of 8 November, on Public Sector Contracts defines the requirements and criteria for awarding the contract. In its paragraph 1, it states that "Contracts shall be awarded using a plurality of award criteria on the basis of the best value for money".

It is not only the lowest price that is relevant. A balance must be struck between efficient purchasing, but with quality parameters and relevant public procurement criteria.

The evaluation criteria will be defined and specified in the tender documents. These are the documents that govern the tender, award and termination of the contract. Thus, the evaluation criteria are, in turn, the award criteria.

There are two relevant criteria:

1. Subjective criteria or criteria that can be assessed by means of value judgements: technical reports, service projects, works projects, physical descriptions of the products, etc. In short, the technical quality of the work, service or supply proposal shall be measured.



## LOPEZ-IBOR

2. Objective criteria or criteria that can be evaluated through the application of formulas: The objective criteria must be measured automatically through the application of formulas so that they must be quantifiable and comparable between the different bidders in a totally objective manner.

**15. Does your legal system provide legal protection against the proposed award of a contract to a competing bidder even before the contract with the competitor is actually awarded (primary legal protection)? If so, please generally explain the proceedings. Is such a primary legal protection available to foreign bidders without any restriction?**

In Spain, there is no primary legal protection in public tenders as the protection is always subsequent to the award of the tender.

**16. If primary legal protection exists in your country, does it depend on certain conditions, i.e., certain thresholds or the kind of goods, services, etc., to be procured? If so, what are the conditions?**

Not applicable.

**17. If there is no primary legal protection, is there legal protection granted after the contract has been awarded, e.g., through damage claims, etc. (secondary legal protection)? If so, what are the principal conditions that have to be presented to a court in order to receive a damage award?**

The Law on Public Sector Contracts establishes an administrative appeal, which is optional, to object different decisions in the public tendering procedure. This remedy requires that the public tender must involve a certain minimum value.

The legal actions are not limited to bidders but are available to all those whose rights and interests may be affected by the award.

Recklessness and lack of substantiation of the appeal may be sanctioned.

The body competent to decide on the appeal may impose a compensation for damages in respect to the damages suffered by the claimant, including the costs incurred in the preparation of the tender and participation in the procurement procedure.

In any case, either because the administrative appeal is not available under certain circumstances or because the claimant decides to go directly to court, it is possible to initiate a contentious-administrative appeal in front of the courts of justice.

## LOPEZ-IBOR

### 18. Can your office

i. give legal advice to foreign clients concerning the relevant formal conditions for preparing a proper bid, etc., and assist in the procurement procedure in your country?

Yes

ii. represent foreign clients seeking primary and secondary legal protection before all public offices/courts in your country?

Yes

iii. Please name a contact person within your office for questions of public procurement law

Alfonso López-Ibor Aliño

Email: [alfonso.lopezibor@l-ia.com](mailto:alfonso.lopezibor@l-ia.com)

Pablo Stöger Pérez

E-mail: [pablo.stoger@l-ia.com](mailto:pablo.stoger@l-ia.com)

Miguel Aravena Cofré

Email: [miguel.aravena@l-ia.com](mailto:miguel.aravena@l-ia.com)

